

AMERICAN INDIAN RELIGIOUS FREEDOM

JUNE 19, 1978.—Referred to the House Calendar and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany H.J. Res. 738]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the joint resolution (H.J. Res. 738) American Indian Religious Freedom, having considered the same, report favorably thereon with an amendment and recommend that the joint resolution as amended do pass.

The amendment is as follows:

Page 3, line 7, after "native" insert "traditional".

PURPOSE

The purpose of House Joint Resolution 738,¹ introduced by Mr.

¹ A similar bill, Senate Joint Resolution 102, passed the Senate.

Udall for himself and Mr. Blouin, is to insure that the policies and procedures of various Federal agencies, as they may impact upon the exercise of traditional Indian religious practices, are brought into compliance with the constitutional injunction that Congress shall make no laws abridging the free exercise of religion.

BACKGROUND

Native Americans have an inherent right to the free exercise of their religion. That right is reaffirmed by the U.S. Constitution in the Bill of Rights, as well as by many State and tribal constitutions. The practice of traditional native Indian religions, outside the Judeo-Christian mainstream or in combination with it, is further upheld in the 1968 Indian Civil Rights Act.

Despite these laws, a lack of U.S. governmental policy has allowed infringement in the practice of native traditional religions. These in-

fringements came about through the enforcement of policies and regulations based on laws which are basically sound and which the large majority of Indians strongly support. These laws often embody principles such as the preservation of wilderness areas and the preservation of endangered species for which Indians have actively fought, literally generations before the non-Indian became convinced of their importance.

But, because such laws were not intended to relate to religion and because there was a lack of awareness of their effect on religion, Congress neglected to fully consider the impact of such laws on the Indians' religious practices.

It is only within the last decade that it has become apparent that such laws, when combined with more restrictive regulations, insensitive enforcement procedures and administrative policy directives, in fact, have interfered severely with the culture and religion of American Indians. Interference with the free exercise of native religions has taken place in three general areas.

The first restrictions are denials of access to Indians to certain physical locations. Often, these locations include certain sites—a hill, a lake, or a forest glade—which are sacred to Indian religions. Ceremonies are often required to be performed in these spots. To deny access to them is analogous to preventing a non-Indian from entering his church or temple. Many of these sites not in Indian possession are owned by the Federal Government and a few are on State lands. Federal agencies such as the U.S. Forest Service, National Park Service, Bureau of Land Management, and others have prevented Indians in certain cases from entering onto these lands. The issue is not ownership or protection of the lands involved. Rather, it is a straightforward question of access in order to worship and perform the necessary rites.

Further, there is the question of cemeteries which were in use at the time of Federal subjugation. In some instances, these lands were put under Federal supervision because they were Indian cemeteries. Yet, today the same tribes cannot bury their religious and political leaders there. There is no overriding reason to deny Indians the right to inter their dead in sanctified ground. Revised regulations and enforcement procedures could allow access for religious purposes and still follow the intent of these laws.

The second major area of Federal violations is the restrictions on use of substances. To the Indians, these natural objects have religious significance because they are sacred, they have power, they heal, they are necessary to the exercise of rites of the religion, they are necessary to the cultural integrity of the tribe and, therefore, religious survival or a combination of these reasons. To the Federal Government, these substances are restricted because the non-Indian has made them scarce, as in endangered species, or because they pose a health threat to those who misuse them, as in peyote.

The Federal court system has shown that this apparent conflict can be overcome with the institution of well thought out exceptions. Although acts of Congress prohibit the use of peyote as a hallucinogen, it is established Federal law that peyote is constitutionally protected when used by a bona fide religion as a sacrament. Yet, a lack of awareness or understanding of the law has led some Federal officials to con-

fiscate sacramental substances. Things which have never been prescribed by law, such as pine leaves or sweet grass, have been confiscated by Federal officials who were suspicious that they were some form of drugs. Even worse, medicine bundles once sealed by religious leaders are never to be opened or handled by others. They are worn or carried by Indians for health, protection, and purity. Although containing only legal substances, these medicine bags or bundles have been opened by customs officials searching for drugs, thus making them unclean and valueless.

Another example of overzealous officials is the confiscation of turkey feathers and the feathers of other common birds which are legal for all Americans to possess, but which are taken with the fear that they might be from some endangered bird.

Even the most ardent conversationist cannot match the need of traditional Indians for preserving eagles and hawks. For some plains tribes, much of their religion depends on the existence of these species. Yet, prohibiting the possession and exchange by Indians of feathers in one's family for generations, or the use of feathers acquired legally does not help preserve endangered species. It does prevent the exercise of American Indian religions. Although the enforcement problems create more difficult administrative issues and requires more careful consideration of regulation changes in this area, it is possible to both uphold the intent of the laws and allow for religious freedom.

Where necessary, tribal representatives will be able to institute self-enforcement procedures designed to insure that any expectation to general regulatory laws surrounding access to sites, use of sacred objects, et cetera, will be confined to tribal members actually participating in the religious exercise or event.

The third area of concern is actual interference in religious events. In some instances, those who interfere have good motives or are merely curious. These instances include being present at ceremonies which require strict isolation, even to the extent of circling the ceremony in small aircraft. Unlike the other areas, some of these incidents happen because of Federal omissions, rather than actions. In areas where the Federal Government has a duty to act or is the only law enforcement at the site, Federal officials have failed to protect Indian religions from intrusions.

In other instances, it is the Government official who directly interferes. This direct Federal interference in the religious ceremonies imposes upon one religion, by Government action, the values of another. Such action is a direct threat to the foundation of religious freedom in America. It comes far too close to an informal state religion.

America does not need to violate the religions of her native peoples. There is room for and great value in cultural and religious diversity. We would be poorer if these American Indian religions disappeared from the face of the Earth.

Much can be done to prevent the destruction of Indian religions. For instance, several States have already taken supportive action. During the eagle feather crisis of 1974, many Oklahoma State officials issued statements of support. Montana went beyond rhetoric to pass a State resolution setting forth the policy of free exercise and protection for Indian religions. The State of California has enacted

the Native American Historical, Cultural, and Sacred Sites Act of 1976 which takes giant strides in overcoming the problems of access. Unfortunately, to date, with the exception of sporadic efforts by a few individuals, the Federal Government's lack of policy has allowed infringements of religious rights to continue.

NEED

As a result of this committee's inquiry into the problems experienced by Indian traditional and religious leaders, it became apparent that there were many instances where the religious rights of the traditional Native Americans were being infringed upon by Federal statutes, regulations, or enforcement policies.

New barriers have been raised against the pursuit of their traditional culture, of which the religion is an integral part. Based on available information, it appears that in nearly all cases the infringements which have occurred have not resulted from an express Federal policy, but rather from a lack of policy at the Federal level. In many instances, Federal officials responsible for the enforcement of the laws in question have simply been unaware of the nature of traditional native religious practices and, consequently, of the degree to which their agencies have interfered or restricted such practices. Lack of knowledge, unawareness, insensitivity, and neglect are the keynotes of the Federal Government's interaction with traditional Indian' religions and cultures. This state of affairs is enhanced by the perception of many non-Indian officials that because Indian religious practices are different than their own that they somehow do not have the same status as a "real" religion. Yet, the effect on the individual whose religious customs are violated or infringed upon is as onerous as if had been Protestant, Catholic, or Jewish.

An example of this is the theft or removal of votive offering left at religious shrines. The committee has received reports of such occurrences on the Zuni Indian reservation in New Mexico. Since the articles are newly made, they are not subject to the Antiquities Act and are often taken out of the country without interference by U.S. Customs officials.

COMMITTEE AMENDMENTS

The amendment adopted by the committee is a minor technical amendment which makes clear that the consultative process required by the act is to be with the native leaders of the traditional Indian religions.

SECTION-BY-SECTION ANALYSIS

The preamble contains a series of "Whereas" clauses recognizing the constitutional right of Indians to practice their traditional religions and the adverse impact that Federal agencies have had upon such practice.

Section 1 sets out the policy of the United States to protect the American Indian, Eskimo, Aleut, and Hawaiian Native in the practice of the traditional form of religion.

Section 2 directs the President to evaluate Federal policy and procedures in consultation with native traditional religious leaders. This

section is designed to insure that a detailed analysis of the specific regulatory or procedural changes that may be necessary are identified and implemented in a systematic and thorough manner. The final requirement calls for the submission of a report regarding the administration's evaluation, including any legislative recommendation, to the Congress within 1 year.

COST AND BUDGET ACT COMPLIANCE

No cost to the Government would be incurred as a result of the enactment of this bill. The analysis of House Joint Resolution 738 by the Congressional Budget Office follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., May 10, 1978.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Longworth Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed House Joint Resolution 738, a resolution relating to American Indian religious freedom, as ordered reported by the House Committee on Interior and Insular Affairs, May 3, 1978.

Based on this review, it appears that no additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

JAMES BLUM
(For Robert A. Levine,
Deputy Director).

INFLATIONARY IMPACT STATEMENT

Enactment of House Joint Resolution 738 will have no inflationary impact.

OVERSIGHT STATEMENT

Other than normal oversight responsibilities exercised in conjunction with these legislative operations, no recommendations were submitted to the committee pursuant to rule X, clause 2(b)2.

COMMITTEE RECOMMENDATIONS

The Committee on Interior and Insular Affairs, by a voice vote, recommends that the bill, as amended, be enacted.

DEPARTMENTAL REPORTS

The committee received no report from the concerned Executive agencies on this legislation. However, the Department of the Interior, Justice, and Agriculture testified before the Senate Committee in support of the bill.

